

Honorable Marc Barreca
Chapter 13
Hearing Location: ZoomGov
Hearing Date: May 24, 2023
Hearing Time: 9:00 AM
Response Date: May 17, 2023

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In re: : Chapter 13 Proceeding
: :
LORIN EDWIN MASSINGALE, : Case No.: 20-12628-MLB
: :
Debtor(s). : REPLY TO CHAPTER 13 TRUSTEE'S
: RESPONSE TO ATTORNEY
: APPLICATION FOR COMPENSATION
: :
: :

COMES NOW Steven Hathaway in reply to the Chapter 13 Trustee's
Response to Attorney's Application for Compensation.

1. PLAN MODIFICATION UNNECESSARY. The adversary proceeding
settled on February 21, 2023. Approval of counsel's application for compensation
does not require plan modification because there are sufficient confidential
settlement proceeds to pay the balance of said compensation. In fact, this
bankruptcy could have been completed and closed well over two months ago with
the proceeds from the confidential settlement and a small contribution from the
Debtor.

2. ATTORNEY LIEN. Under Washington law an attorney has a lien for his
or her compensation, whether specially agreed upon or implied, upon money in the
attorney's hands belonging to the client and money in the hands of the adverse

1 party in an action or proceeding, in which the attorney was employed. RCW
2 60.40.010.

3 3. PRIOR ATTORNEY FEES. The Debtor paid \$10,000 to several other
4 attorneys prior to filing for bankruptcy. As discussed with the Debtor, he should
5 be entitled to a refund of most of those fees.
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7 4. PAYMENT RECEIVED. The majority of the \$34,292.99 that was paid to
8 counsel during the Debtor's bankruptcy came from the proceeds of a confidential
9 settlement with one of the Defendants in the adversary proceeding. Counsel's fee
10 application includes a request that these fees be approved. Debtor paid a portion of
11 these fees and certain adversary costs directly.
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14 5. WITHDRAWAL. Counsel's motion to withdraw specifies he is moving to
15 withdraw as attorney of record for the Debtor in his bankruptcy proceeding and as
16 attorney for Plaintiff in his adversary proceeding. The motion to withdraw
17 includes the bankruptcy case number and the adversary case number. It seems a
18 waste of time and judicial resources to file a separate motion under the bankruptcy
19 case number alone. Two separate received unsigned orders will be submitted upon
20 court approval.
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24 6. DEBTOR FIRED COUNSEL. The Debtor/Plaintiff terminated counsel's
25 services in a phone call dated April 17, 2023. Counsel confirmed that with him in
26 correspondence dated April 18, 2023, which was sent to by email and regular mail.
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1 7. FEES WERE TRIMMED AND ALSO REDUCED. When reviewing the
2 time records Counsel significantly trimmed the time spent on each task before the
3 statement was finalized and submitted as an exhibit submitted to the court with the
4 fee application. Counsel then reduced the fees by an additional 30%. The fee
5 application is more than fair given the time spent on the case and the results. The
6 confidential settlement amounts likely exceed what Plaintiff would have received
7 at trial. The fees and costs of preparing for and attending trial are significant. The
8 risks associated with going to trial were also significant.

9 8. FEE REQUEST IS REASONABLE. The court is aware of the nature of
10 the adversary proceeding, the complexity of the issues involved, the large volume
11 of documentary evidence, and multiple defendants. The court certainly spent a
12 very significant amount of time and judicial resources reviewing the multitude of
13 pleadings, considering, and deciding the various motions.

14 (a) Counsel Vigorously Represented Debtor/Plaintiff. Throughout the years
15 the adversary has been pending, counsel has worked diligently and effectively to
16 advance the position of the Debtor/Plaintiff. Counsel spent hundreds of hours
17 (well over 305 hours) devoted to representing the Debtor in his bankruptcy and
18 adversary proceeding. These efforts included, without limitation, the following:

- Factual investigation, legal research, and preparation of complaint and amended complaint against Defendants US Bank, Caliber Home Loans, and Rushmore Loan Management Services.
- Review of well over 10,000 pages of documents (multiple times).
- Research and draft numerous legal pleadings including responses and replies to two Caliber motions to dismiss.
- Drafting Caliber interrogatories and requests for production, drafting Rushmore interrogatories and requests for production, drafting responses to Caliber interrogatories and requests for production.
- Drafting four motions for summary judgment – one against Caliber and two against Rushmore, drafting responses and replies to motions for summary judgment.
- Preparation for Debtor's deposition, preparation and attendance at Caliber's deposition, preparation for Rushmore's deposition.
- Numerous letters, emails, phone calls, multiple court appearances, mediation preparation and appearance.

(b) Excellent Result for the Debtor/Plaintiff. Counsel's efforts achieved a great result for the Debtor/Plaintiff. He first contacted counsel on October 8, 2020. At that time, he was \$67,409.42 in arrears on his HELOC. His home was scheduled to be sold at foreclosure on October 30, 2020, at 10:00 AM, on the steps

1 of the Skagit County Courthouse. Ongoing HELOC payments were made during
2 the pendency of the bankruptcy, but nothing has paid on the HELOC arrears.

- 3 • The proceeds from the confidential settlements with the Defendants were
4 sufficient to pay all of those requested in counsel's fee application plus a
5 large portion of the Debtor's mortgage arrears.
- 6 • The confidential settlement with U.S. Bank/Rushmore is over three times the
7 amount Debtor/Plaintiff requested at mediation. The increase in the
8 settlement amount were the direct result of counsel's efforts drafting and
9 filing a motion for summary judgment, declaration in support thereof,
10 numerous exhibits, defense of Rushmore's motion for summary judgment,
11 supplementary briefing, and the like.
- 12 • The confidential settlement amounts received were the direct result of
13 counsel's hard work.

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21 *Date: 05/19/2023*

/s/ Steven C. Hathaway

Steven C. Hathaway, WSBA #24971

Attorney for Debtor/Defendant

DECLARATION OF SERVICE

THE UNDERSIGNED CERTIFIES UNDER PENALTY OF PERJURY THAT
ON 05/19/2023 THE UNDERSIGNED CAUSED TO BE DELIVERED EITHER
BY FIRST CLASS MAIL, LEGAL MESSENGER OR ELECTRONICALLY A
COPY OF THIS REPLY TO THE PARTIES SET FORTH IN THE ATTACHED
BANKRUPTCY COURT MAILING MATRIX.

Dated: 05/19/2023

/s/ Simone M. Hathaway

Simone M. Hathaway, Legal Assistant